

TD 95/D5 - Income tax: under the Fly Buys program and similar consumer award programs which apply primarily for private or domestic purchases, is any amount of the award assessable where some of the purchases are employer-paid transactions?

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This document has been finalised by TD 96/15.

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

Draft Taxation Determination

Income tax: under the Fly Buys program and similar consumer award programs which apply primarily for private or domestic purchases, is any amount of the award assessable where some of the purchases are employer-paid transactions?

1. No. Under a consumer award type program which is primarily aimed at domestic purchases by the employee and the employer-paid transactions represent only a small proportion of an award benefit, we will accept that there is no assessable amount under section 21A, subsection 25(1), section 26(e) or section 160ZO of the *Income Tax Assessment Act 1936*. Nor will any fringe benefits arise under the *Fringe Benefits Tax Assessment Act 1986*.
2. Where it can be reasonably foreshadowed that there will be no assessable amount, no records will need to be kept for points accruing as a result of such transactions. In any other case, an apportionment of points between employer-paid and non employer-paid transactions, on the basis outlined in Taxation Ruling TR 93/2, is necessary.
3. Frequent flyer programs covered in Taxation Ruling TR 93/2 have a business focus and we consider that these programs are not structured primarily for private or domestic purposes. Accordingly, this Determination does not apply to those programs.

Example 1

An employee is accruing points under a consumer award program largely as a result of the private purchase of household items and to a lesser extent, from the purchase of stationery for work which is paid by her employer out of petty cash. The stationery purchases are expected to be infrequent and would not provide a significant number of points toward any benefit. The employee would not be required to keep records of points accruing as a result of the employer paid transactions and would not be liable to income tax on any portion of the benefit arising from the points.

Example 2

An employee is accruing points under a consumer award program as a result of private purchases of household items but accrues a large proportion of points from a one-off employer-paid transaction. The employee would be required to keep records of the points relating to that transaction so an apportionment in accordance with Taxation Ruling TR 93/2 can be made. Income tax would be payable on the business proportion of the benefit.

Example 3

An employee is accruing points under a consumer award program as a result of private purchases. In his capacity as purchasing officer he also accrues points as a result of frequently purchasing stationery for the office. Purchases occur regularly throughout the year and minimum purchases are not less than \$500 per order. Points arising from the employer-paid transactions will form a significant proportion of a benefit arising under the program. The employee would be required to keep records of the points relating to those transactions so an apportionment in accordance with Taxation Ruling TR 93/2 can be made. Income tax would be payable on the business proportion of the benefit.

Commissioner of Taxation15/06/95

FOI INDEX DETAIL: Reference No.

Related Determinations:

Related Rulings: TR 93/2; TR 94/15

Subject Ref: assessable income; consumer award programs

Legislative Ref: ITAA 21A; ITAA 25(1); ITAA 26(e); ITAA 160ZO

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